

DOMAIN NAME RESELLER TO PROVIDE REFUNDS FOLLOWING A.C.C.C. FEDERAL COURT ACTION

Internet Registrations Australia Pty Ltd will provide refunds to recipients of its misleading 'renewal notices' who respond to its apology, following settlement of an Australian Competition and Consumer Commission Federal Court action.

The ACCC has accepted court-enforceable undertakings by IRA to provide the refunds, and the Federal Court, Canberra, made orders against IRA for making false or misleading representations regarding registration and renewal of Internet domain names.

The ACCC instituted Federal Court proceedings in September 2002, after it was alerted to IRA's conduct following an influx of consumer complaints and inquiries about unsolicited domain name 'renewal advice' notices which looked like invoices for payment. The ACCC contacted IRA advising them of the concerns and at the time, IRA made an informal undertaking to the ACCC that it would rectify its marketing practices.

The court orders include permanent injunctions stopping IRA from engaging in similar conduct in the future, requiring it to implement a trade practices compliance program, to pay an agreed amount of the ACCC's costs, and declarations that the conduct of IRA had breached certain provisions of the *Trade Practices Act 1974*.

The misleading notices were distributed by IRA to approximately 70,000 recipients, located throughout Australia. Many recipients of the notices did not have a pre-existing relationship or prior dealings with IRA.

"This outcome is a warning to businesses that send false invoices to potential customers implying that an amount of money is due when that business has had no previous dealings with the customer", ACCC Chairman, Professor Allan Fels, said today. "Such businesses place themselves at risk of being investigated by the ACCC and facing possible litigation.

"Confidence in domain name service providers is critical to the development of e-commerce. The ACCC remains vigilant of businesses which operate in new and emerging areas of commerce and will act to stop illegal conduct.

"A number of companies are now offering domain name licence registration and renewal services in the com.au domain space. As competition develops in this sector, business and individuals need to make sure that they understand how the registration system works and how to choose the offer that best suits their needs. Suppliers of domain name renewal services are warned not to mislead customers as to their need to renew their domain name licence with a particular supplier; as such conduct may breach the consumer protection sections of the *Trade Practices Act*".

The ACCC reminds domain name licence holders:

- that its publication "Scams, protect your business from them" is available on the Internet http://www.accc.gov.au/pubs/Publications/Business_Small/Small_business/Scams_final.pdf

- to be aware of offers or notifications to renew domain name licences, ensure the company they respond to is their true supplier;
- not to assume that any renewal notice is from their original supplier;
- to carefully check the rates and terms and conditions of the renewal notice; and
- to be aware that their provider of services such as Internet access or e-mail, may bundle their domain name registration with those services for one price.

Domain name licensees who are concerned about any issue in the Australian domain name industry should contact auDA, the association that governs the .au domain space. The auDA website also lists the accredited registrars for each Australian domain: <http://www.auda.org>.

FURTHER INFORMATION

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MR 307/02

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BACKGROUND

The court orders included that IRA had made false, misleading and/or deceptive claims in breach of the *Trade Practices Act 1974* by representing to businesses that:

- it had a pre-existing relationship or prior dealing with them;
- it had the authority to register or renew a consumer's domain name and could provide the services of registration or renewal;
- it could register '.com.au' domain names on the Internet for periods of four, six, eight, or 10 years, and that registration for periods over two years would involve savings;
- a payment for unsolicited domain name services must be made;
- renewal fees paid by recipients for registration of .com.au domain names are not fully refundable even where the registration has been unsuccessful;
- statutory warranties that the services will be rendered with due care and skill and be fit for the purpose made known by the consumer do not exist or may be excluded; and
- clauses of the terms and conditions posted on IRA's Website were capable of avoiding the effect of the Act.

The court also declared that IRA had contravened provisions of the Act by:

- failing to supply domain name renewal services within a reasonable time or by the renewal deadline;
- accepting payment for the provision of renewal services or 'renewal management' services where, at the time of acceptance of such payment, IRA intended to supply services materially different from the services which the recipient would reasonably expect to receive; or
- failing to supply domain name renewal services or domain name 'renewal management' services at all due to not having possession of the recipient's registry key.